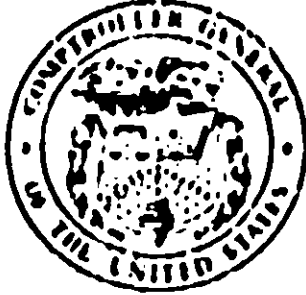


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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

J.A. Carter PL I

FILE: B-189944

DATE: May 9, 1978

MATTER OF: E. P. Reid, Inc.

DIGEST:

1. Contrary to position taken by Department of Army, funds contributed by Army under Reserve Forces Facilities Act (10 U.S.C. § 2231, et seq.) constitute Federal grant for purposes of GAO review of complaints of award of contracts by State.
2. Requirement that contractor be listed by Underwriter's Laboratories for installation of alarm systems related to responsibility of bidder and, therefore, bidder need not be listed at date of bid opening.
3. Where bidder under IFB bids "audited cost plus 10%" for item, such notation renders bid indefinite and nonresponsive.

E. P. Reid, Inc. (Reid), has requested review of the bids of Sentry, Inc., under solicitations Nos. DAHA28-77-C-0030, -0031, -0032, and -0033, issued by the State of New Jersey Department of Defense for the installation of intrusion detection systems at various National Guard armories in the State of New Jersey.

The solicitations were issued to select firms in June 1977 following the normal State of New Jersey format and procedure. Reid was the second low bidder on each solicitation at bid opening on June 29, 1977, with Sentry being the low bidder. Reid contends that Sentry's bid was not responsive because Sentry was not listed by Underwriter's Laboratories (UL) for the installation of alarm systems, as required by the solicitation, and a portion of its bid was on a cost-plus-percentage-of-cost basis.

The Department of the Army questions whether this Office should consider the matter because the procurement action was not by an agency of the Federal Government. Reid contends that, since significant Federal funds are involved and the contract documents specifically refer to the need to meet Federal qualifications, this Office should consider the protest. The Army's report, however, advises that the Federal funds involved are in the nature of a "contribution" and that the contracting officer will be a State official rather than the United States Property and Fiscal Officer for New Jersey.

While the matter is not for consideration under our Bid Protest Procedures (4 C.F.R. part 20 (1977)) since it is not a procurement by or for an agency of the Federal Government, our Office will review the complaint of Reid consistent with our Public Notice entitled "Review of Complaints Concerning Contracts Under Federal Grants" (40 Fed. Reg. 42406, September 12, 1975).

While the Army takes the view that this procurement by New Jersey involves a contribution under the Reserve Forces Facilities Act (10 U.S.C. § 2231, et seq. (1976)), and not a grant, we do not find the difference in terms to be controlling. Here, the Federal Government is contributing 75 percent of the total contract price thereby meeting the requirement of our notice that significant Federal funds be involved. The fact that the procurement is to be conducted in accordance with State law is not a bar to our review. See Copeland Systems, Inc., 55 Comp. Gen. 390 (1975), 75-2 CPD 237. Moreover, the agreement between New Jersey and the Army imposed certain conditions upon the grant and the right of approval by the Army for certain actions. Cf. International Commodities Export Company, B-186822, August 23, 1977, 77-2 CPD 141.

Returning to the merits of Reid's complaint, the solicitations' specifications at paragraph 8.03C read as follows:

"Contractor shall be regularly engaged in the installation and

servicing of local, remote, or central station alarm systems and shall be listed by Underwriter's Laboratories for installation of alarm systems."

Reid argues that as of the bid opening date of July 29, 1977, Sentry did not possess the Underwriter's Laboratories listing and did not obtain the listing until August 17, 1977, and, therefore, its bid was unacceptable.

However, the provision that the contractor be listed by UL for installation of the systems is a qualification requirement to which Sentry stated no objection in its bid and as such is a matter that relates to the responsibility of the bidder and not the responsiveness of its bid. Contra Costa Electric, Inc., B-190916, April 5, 1978. Accordingly, the critical time for compliance was not the bid opening. See, in this regard, 53 Comp. Gen. 36, 38 (1973), dealing with licenses. Accordingly, Sentry did not have to have the UL approval at the date it submitted its bid.

Reid also argues that Sentry's bid is nonresponsive because in the portion of its bid on the Vineland, New Jersey Armory, in the space for pricing the installation of the telephone line, Sentry bid "audited cost plus 10%," rather than a fixed-price bid.

Our Office has found no State law regarding this particular area. We believe that the bid of Sentry violates a basic tenet of Federal procurement law which must be followed in the absence of State law to the contrary. Illinois Equal Employment Opportunity Regulations for Public Contracts, 54 Comp. Gen. 6 (1974), 74-2 CPD 1. That principle is that for a bid to be considered responsive it must be firm and definite as to price. 48 Comp. Gen. 464, 469 (1969); 37 id. 780 (1958); 36 id. 124 (1956); 19 id. 614 (1939). Bids which are qualified as to render the price indefinite are for rejection for uncertainty. Id.

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Here, the final bid price of Sentry is not known until performance is underway rather than at bid opening. Therefore, we find the bid of Sentry under solicitation No. -0031 to be nonresponsive and recommend that the bid not be considered for award.


Deputy Comptroller General
of the United States